IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

CRL.A.No. 2320 of 2007()

AGAINST THE ORDER DATED 15/10/2007 IN MC 75/07 IN SC.120/2007 of ADDL. DISTRICT AND SESSIONS COURT(AD HOC)-III KOLLAM

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APPELLANT: COUNTER PETITIONERS - SURETIES

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1. SIVAN PILLAI,
   NISHA BHAVANAM, ERAVICHIRA NEDUVELI MURI,
   SOORANAD THEKKU VILLAGE, KOLLAM.

2. BABURAJAN PILLAI,
   DEEPASH BHAVANAM, KIDANAGAYAM MURI,
   SOORANADU THEKKU VILLAGE, KOLLAM.

BY ADV. SRI.K.V.ANIL KUMAR

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.M.NAZAR

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 29/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl. Appeal No. 2320 of 2007

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Dated: 29-11-2007

ORDER

Appellants were the sureties of the 7th accused in Sessions Case No. 120 of 2007 on the file of the Addl. District and Sessions Court (Adhoc) III, Kollam for offences punishable under Sections 120 (B), 307, 324 read with Sec. 34 I.P.C. and Section 3 of the Explosive Substances Act. Consequent on the non-appearance of the 7th accused, the Sessions court initiated proceedings against the appellants under Sec. 446 Cr.P.C. To the show cause notice they had no reasonable explanation except that the 7th accused had gone abroad and was still abroad. Thereupon the court below passed the impugned order dated 15-10-2007 imposing the bond amount as penalty on each of the appellants. It is the said order which is assailed in this appeal.

2. The learned counsel appearing for the appellants re-iterated the above contentions and submitted that it was beyond the appellants' knowledge or control that the 7th accused went abroad. In **Mohammed Kunju & Anr. v. State of Karnataka - 1999 (4) Crimes 320** the Apex Court had given remission to the sureties therein holding that they had not actively or passively assisted the accused to go abroad and for the conduct of the accused slipping out

of the country, the sureties could not be held liable. I see no reason why the above ratio should not be applied in the case of the appellants also for giving remission. Accordingly, the amount of penalty is reduced to Rs. 5,000/-. Each of the appellants shall pay the reduced penalty of Rs. 5,000/- within one month from today failing which they shall be proceeded against in accordance with law.

V. RAMKUMAR,
(JUDGE)

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